



May 3, 2001

Mr. Warren Spencer
Legal Advisor
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2001-1814

Dear Mr. Spencer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146738.

The City of Plano (the "city") received a request for a transcript of a telephone call and information pertaining to the name and address of the caller, as well as the time of the call. You state that you have released information pertaining to the time of the calls and a 9-1-1 audiotape of a conversation, redacted to exclude a reference to the caller's address. Although the caller is not identified on the audiotape, you have submitted to us a printout of the computer aided dispatch ("CAD") screen concerning the call which lists the caller's identity. You claim that the identity and address of the caller is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered the comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may make comments stating why information should or should not be released).

We note at the outset that you state that no transcript of the telephone call exists. The Public Information Act (the "Act") does not require a governmental body to create or prepare new information in responding to a request for information. *See Attorney General Opinion JM-672; see also Open Records Decision Nos. 452 (1986), 467 (1987)*. A governmental body must only make a good faith effort to relate a request to information which it holds. *See Open Records Decision No. 561 at 8 (1990); see also Open Records Decision No. 87 (1975)*. We believe that the copy of the 9-1-1 audiotape submitted to us for review is information that the city holds that sufficiently relates to the requested transcript.

We now address whether the reference to the caller's address on the audiotape and the listing of the caller's identity on the CAD screen printout are excepted from disclosure pursuant to

section 552.101 of the Government Code. We note that a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You did not, however, submit to this office a copy of the written request for information.

A governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. *See* Gov't Code § 552.302. However, a governmental body can overcome this presumption by demonstrating a compelling reason why the information must be withheld from disclosure. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ); *see also* Open Records Decision No. 319 (1982). A demonstration that the requested information is deemed confidential by law or implicates a third party's interest is a compelling interest sufficient to overcome the presumption. *See* Open Records Decision No. 150 (1977). You claim that the caller's identity listed on the CAD screen printout is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law informer's privilege. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Generally, a claim under section 552.101 constitutes a compelling reason to withhold information from disclosure. However, a claim under the informer's privilege may be waived by a governmental body since the privilege belongs to the government. *See* Open Records Decision No. 549 at 6 (1990). In this instance, you waived your interest in this claim by failing to comply with the requirements of section 552.301(e) of the Government Code. Therefore, we conclude that the informer's privilege cannot provide a compelling interest in this instance. Accordingly, the caller's identity may not be withheld from disclosure pursuant to section 552.101 in conjunction with the common law informer's privilege.

You also claim that Rule 508 of the Texas Rules of Evidence excepts the caller's identity on the CAD screen printout from disclosure. We generally do not address discovery and evidentiary rules that may or may not be applicable to information submitted to our office by a governmental body. *See* Open Records Decision No. 416 (1984) (finding that even if evidentiary rule specified that certain information may not be publicly released during trial, it would have no effect on disclosability under Public Information Act). You argue that Rule 508 is "other law" that makes the caller's identity confidential. However, "[t]he Texas Rules of Civil Procedure and the Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at *14 (Tex. Feb. 15, 2001). The CAD screen printout that you submitted to us for review does not fall into one of the categories of information made expressly public by section 552.022.

Therefore, the Texas Rules of Civil Procedure and the Texas Rules of Evidence are not applicable. Accordingly, the caller's identity on the CAD screen printout is not excepted from disclosure pursuant to Rule 508 of the Texas Rules of Evidence. Because you make no other arguments as to why the caller's identity should be withheld from disclosure, you must release the identity to the requestor.

Finally, you argue that the reference to the caller's address on the submitted audiotape is excepted from disclosure pursuant to section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Section 552.101 encompasses information protected by other statutes. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. See Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Health & Safety Code § 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the caller's address is excepted from public disclosure based on section 552.101 as information deemed confidential by statute. If, on the other hand, the emergency communication district here is not subject to section 772.118, 772.218 or 772.318, the caller's address is not protected under section 552.101 and must, therefore, be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

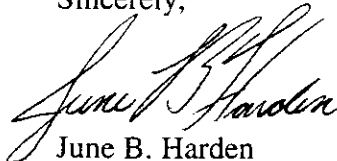
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 146738

Encl. Submitted documents and tape

cc: Mr. Robert Willich
3553 Santana Lane
Plano, Texas 75023
(w/o enclosures)